(2)

No. 90-290

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DR. BILLY RAY EUBANKS,

Petitioner,

v.

GETTY OIL COMPANY, TEXACO INC.,
AND TEXACO PRODUCING INC.,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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September 15, 1990

QUESTION PRESENTED

Whether in applying Alabama law to the facts of this case, the Fifth Circuit properly found that collateral estoppel barred Petitioner from litigating for a second time his factual assertion that Respondents withheld material information from and gave misleading information to a state agency, which finding, when given its preclusive effect as required by the full faith and credit statute, 28 U.S.C. § 1738, foreclosed Petitioner from pursuing his purported federal antitrust case, where the prior state court finding had conclusively rejected the sole factual allegation of Respondents' monopolizing conduct stated in Petitioner's antitrust complaint.

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Dr. Billy Ray Eubanks, and the Respondents, Getty Oil Company, Texaco Inc., and Texaco Producing Inc. The same parties are the parties before this Court.

In addition, Texaco Inc. hereby lists affiliated corporate entities pursuant to Rule 29.1 as follows:

Four Star Oil and Gas Company
Texaco Cogeneration Company
Texaco Pipeline Inc.
Texaco Producing Inc.
Texaco Refining and Marketing Inc.
Texaco Refining and Marketing (East) Inc.
Texaco TPC Inc.
Texaco Trading and Transportation Inc.
Norsk Texaco Oil A/S
S.A. Texaco Belgium N.V.
Texaco A/S
Texaco Britain Limited
Texaco Denmark Inc.
Texaco Investments (Netherlands), Inc.
Texaco (Ireland) Limited
Texaco Limited
Texaco North Sea U.K. Company
Texaco Petroleum Maatschappij (Nederland) B.V.
Refineria Panama S.A.
Refineria Texaco de Honduras, S.A.
Texaco Brasil S.A. — Produtos de Petroleo
Texaco Caribbean Inc.
Texaco Nigeria Limited
Texaco Overseas (Nigeria) Petroleum Company
Texaco Panama Inc.
Texaco Petroleum Company
Texaco Puerto Rico Inc.
Texas Petroleum Company
Getty Oil Company
Texaco Chemical Company
Texaco International Trader Inc.
Texaco Overseas Holdings Inc.
Texaco Overseas Petroleum Company
TRMI Holdings Inc.

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STATUTES INVOLVED

Besides the statutes listed by Petitioner, 15 U.S.C. § 2, Ala. Code § 9-17-15, and Ala. Code § 9-17-19, Respondents also make reference to 28 U.S.C. § 1738, reproduced in the appendix hereto, p. A-1.

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BRIEF IN OPPOSITION

The Respondents, Getty Oil Company, Texaco Inc., and Texaco Producing Inc., respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 896 F.2d 960 (5th Cir. 1990).

STATEMENT OF THE CASE

In the opinion below, the Fifth Circuit assessed the collateral estoppel effect, under Alabama law, of an Alabama court's review of a state oil and gas agency order. Petitioner's predecessor-in-interest had challenged the agency order on the basis that Respondents allegedly had submitted misleading information to and withheld material information from the agency. The Alabama court rejected these challenges, finding that the allegations on which they were based were without merit. The Fifth Circuit found that the state court's findings were entitled to preclusive effect under Alabama's collateral estoppel rules. Following the dictates of the full faith and credit statute, 28 U.S.C. §1738, the Fifth Circuit held that Petitioner Eubanks was foreclosed from

pursuing a monopolization case that was premised solely on the identical factual contention rejected in the prior state court proceedings. The dismissal of Eubanks' antitrust case by the district court was accordingly affirmed.

The facts of this case and the prior state court case arise out of gas producing operations at the Hatter's Pond gas field in Alabama. (These identical facts also constituted the basis for a certiorari petition in the prior state court case advanced by Petitioner and others to this Court, which was denied. *Anderson* v. *State Oil and Gas Board*, 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987).) Getty Oil Company ("Getty") discovered gas and gas condensate on its property near Mobile, Alabama, in 1974. The field is relatvely large and geologically complicated.

By 1982, Getty believed that the injection of gas back into the field could push out gas condensate that otherwise would be left in the ground. To get permission to undertake these enhanced recovery operations, Getty filed the required petition with the Alabama State Oil and Gas Board ("Board"), requesting that the field be unitized prior to implementation of secondary recovery. (Unitization in Alabama is the typical state-ordered procedure whereby a unit operator is designated to conduct secondary recovery and producing operations for all the other owners. Production from field-wide operations is shared among the owners pursuant to a participation formula set by the Board after investigation and hearings). Amax Petroleum Corporation ("Amax"), Petitioner's predecessor-in-interest, opposed Getty's plan.

After the hearings on Getty's initial proposal for the Hatter's Pond Field, the Board found that the Hatter's Pond Field should be unitized, but rejected the specific plan proposed by Getty. Among other things, the Board directed a new geographic area and a new participation formula for the unit.

Getty filed a new unitization proposal incorporating the Board's instructions. The Board held further hearings during which Amax and other parties expressly charged that Getty's information disclosures were improper and moved to compel further disclosure. Among the particular documents Amax

sought were certain of Getty's confidential internal interpretative evaluations. Getty voluntarily made underlying information, raw data, and even physical evidence such as the core samples from the drilling operations available, but withheld the interpretative reports. Moreover, as operator of 12 of the 13 producing wells in the field, Getty had already provided thousands of pages of documents to the Board and the other owners over a period of nine years constituting the raw data accumulated during its producing operations from which geologists and petroleum engineers (including those of other owners and those on the expert staff of the Board) could evaluate the field.

In 1984, the Board entered its final unitization order for the Hatter's Pond Field, and made findings which reviewed the nine years of information that had been analyzed by its expert staff, which confirmed Getty's second submissions, and which rejected the materiality of the documents withheld by Getty. These findings included, *inter alia,* the following:

> "Sufficient data are now available, and the consideration of any additional production, pressure, and operating data from the Hatter's Pond Field is not necessary for the field to be unitized in a fair and equitable manner."
>
> * * *
>
> "That requests for discovery . . . were voluntarily complied with by Getty Oil Company and all parties involved in those proceedings were given full and complete rights to examine and cross-examine all witnesses in those proceedings and to call any persons as witnesses whom they desired to call."
>
> * * *
>
> "That the Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it."
>
> * * *

"That voluminous amounts of information and data have been produced during these hearings . . . and the previous hearings . . . , and all parties involved in all these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the unitization of the Hatter's Pond Field."

* * *

"The information that Getty Oil Company refused to provide these parties is not necessary to determine the issues presented before the Board."

* * *

"[T]o the extent not already complied with, the discovery requests of . . . Amax Petroluem Corporation are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit."

Amax and certain other property owners thereafter commenced suit in Alabama state court, challenging the Board's unitization order and contending that Getty's disclosures were improper. They further alleged that misleading disclosures and nondisclosures by Getty caused the Board to order an improper unitization, and amounted to fraud. The state court specifically rejected the contention of Amax that Getty had perpetrated a fraud, but nonetheless reversed the Board's unitization order and remanded for further consideration certain aspects of the Board's order.

Getty appealed to the Alabama appellate court. *State Oil and Gas Board* v. *Anderson*, 510 So.2d 250 (Ala. Civ. App. 1987), *cert. denied*, Alabama Supreme Court, *Id.* (1987), *cert. denied*, *Anderson* v. *State Oil and Gas Board*, 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987). Amax had cross-appealed, asserting once again that Getty's disclosures were inadequate and misleading. The Alabama appellate court reversed, finding no merit to Amax's claims, sustaining the Board's order based on

Getty's submissions, and rejecting the claim that the withheld information was material or necessary to the Board's decision. It held that the Board's decision was reasonable and based on substantial evidence. 510 So.2d at 255-57.

Petitions for certiorari were sought from the Alabama Supreme Court and from this Court. Both petitions were denied. *Id.*, 510 So.2d 250; 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987). Petitioner Eubanks commenced this federal antitrust case in 1988 in the Eastern District of Louisiana. In March 1989, the district court granted summary judgment to Respondents based on the collateral estoppel effect of the prior state court findings. In March 1990, the Fifth Circuit affirmed.

REASONS WHY THE PETITION SHOULD BE DENIED

A quick glance at Petitioner's first paragraph suggests to the reader that the opinion below was an aberrational "could have been litigated" case under wrongly applied res judicata principles. Dr. Eubanks' focus on res judicata jurisdictional competency principles is inappropriate. The opinion below is not about res judicata or what causes of action might have been entertained by the state courts in the prior proceeding. This case is about collateral estoppel, whereunder irrespective of what causes of action could have been litigated before, the facts established in prior proceedings are given preclusive effect.

This Court, moreover, has already determined that the preclusive effect of properly determined issues can extend from the state courts to the federal courts, even where collateral estoppel forecloses pursuit of a claim exclusively within the jurisdiction of the federal courts. *Becher* v. *Contoure Laboratories, Inc.*, 279 U.S. 388, 49 S.Ct. 356, 73 L.Ed. 752 (1929), *reaffirmed on point by, Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274, *reh. denied*, 471 U.S. 1062, 105 S.Ct. 2127, 85 L.Ed 2d 491 (1985). Accordingly, it is wrong to state, as Petitioner does, that the Fifth Circuit committed "serious error" (Pet. at 6). As detailed below, the case 1) is neither wide-ranging in impact regardless of who wins nor important in its legal

precepts (which are based primarily on settled state law), 2) conflicts with no decision of any other circuit, 3) is controlled by existing Supreme Court precedent, and 4) was properly decided by the Fifth Circuit and contains none of the novelty suggested by Petitioner's imprecisely-worded question presented. The request for a writ of certiorari is due to be denied.

1. This is a case which relies heavily on its own particular facts, and it is unlikely to affect anyone beyond the parties.

This is an unremarkable case which presents no significant question of unsettled law requiring this Court's attention, and it involves no broad-ranging effect on anyone other than the parties. The Fifth Circuit applied well-settled Alabama law governing the application of collateral estoppel for findings of Alabama courts, *see, Timmons* v. *Central Bank of the South,* 528 So.2d 845, 847 (Ala. 1988), as required by the full faith and credit statute, 28 U.S.C. § 1738. *Migra* v. *Warren City School District Board of Education,* 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed 2d 56 (1984).

Collateral estoppel determinations under Alabama law are heavily dependent upon the facts and circumstances of the particular case. So it was here. Practically the entire analysis of Alabama's collateral estoppel elements by the Fifth Circuit involved considerations of the facts of the two cases. There is no suggestion by Petitioner that the Fifth Circuit misread Alabama law. The only legal issue framed by the Petitioner—whether state court findings can foreclose pursuit of a claim within the exclusive jurisdiction of the federal courts—has been squarely settled by this Court in Respondents' favor in *Becher* v. *Contoure Laboratories.*

Nor are any parties beyond the Petitioner and the Respondents likely to be affected by the outcome of this case regardless who wins. The case surrounds operations at only one, albeit large, gas field. Other interest owners in the Hatter's Pond Field have neither intervened in this case nor brought their own cases. No other commercial entities or businesses are impacted by this case. When stripped of its legal rhetoric, this dispute is really

nothing more than the continued fight over the Hatter's Pond unit sharing formula carried on between property owners.

2. There are no conflicts among the circuits in the decisions cited by Petitioner.

Dr. Eubanks suggests that the decision of the Second Circuit in *Lyons* v. *Westinghouse Electric Corp.*, 222 F.2d 184 (2nd Cir.), *cert. denied sub nom., Walsh* v. *Lyons*, 350 U.S. 825, 76 S.Ct. 52, 100 L.Ed 737 (1955), posed an "especial" conflict with the Fifth Circuit's decision below. This statement by the Petitioner is incorrect. In *Lyons*, the state court in New York was presented with a defense to a contract action which encompassed an entire federal antitrust claim. A state court decision in that context, it was argued, would have been a res judicata bar and merger of any subsequent federal antitrust claim if the defense succeeded. The Second Circuit found that such a bar and merger resulting from a state court decision on the merits and full facts of the antitrust defense would be an impermissible intrusion upon the exclusive jurisdiction of the federal courts over the federal antitrust laws.

The differences from the case at bar are readily apparent; the Alabama courts were not confronted with the litigation of an entire federal antitrust claim or its complete body of underlying facts, or anything denominated as an antitrust claim. Thus, there could be no unwarranted intrusion on the federal court's exclusive jurisdiction by the application of collateral estoppel here of the sort *Lyons* sought to prevent. Furthermore, in writing the decision on the rehearing for the Second Circuit, Judge Hand distinguishes the *Lyons* case from the case which controls the issue herein, *Becher* v. *Contoure Laboratories*, noting that the "immunity" provided by the exclusive grant of federal jurisdiction over antitrust cases from prejudgment in the state courts is limited:

> *[Becher]*, to say nothing of our own [decision] which it affirmed, would, I believe, make the specific findings of fact of the state court, had there been any, estoppels in this action, even though the result were to put an end to the

> plaintiffs' claim. I concede that in effect this means that the exclusive jurisdiction of the federal court under §15 may be impaired by a state judgment; and that the immunity which that section grants is limited to judgments of state courts that except for that immunity would be bars or mergers [i.e. res judicata]. I cannot read *[Becher]* in any other way. . . .

222 F.2d at 196.

There is little doubt that the Second Circuit, if faced with the facts in the opinion below here, would follow Judge Hand's analysis of *Becher*, and apply collateral estoppel effect to a state court finding on a single element of an antitrust claim regardless of the exclusive jurisdiction of the federal courts over federal antitrust claims.

Dr. Eubanks also suggests that there is a conflict between the opinion of the Fifth Circuit below and that of the Eighth Circuit in *Richardson* v. *Phillips Petroleum Co.*, 791 F.2d 641 (8th Cir. 1986), *reh. denied*, 799 F.2d 426, *cert. denied*, 479 U.S. 1055, 107 S.Ct. 929, 93 L.Ed. 2d 981 (1987). Besides the fact that different States' laws are being applied (rendering a conflict almost an impossibility), there is no conflict between the opinion below and *Richardson*. *Richardson* is distinguishable on its facts and it would not be the controlling Eighth Circuit decision if the facts presented here were confronted by the Eighth Circuit.

In *Richardson*, plaintiffs filed a petition with the Arkansas Oil and Gas Commission, seeking injunctive relief to stop defendants from violating a pre-existing order of the Commission. The Commission found that the plaintiffs had failed to prove that they had been irreparably harmed, and refused to issue the injunction. The Arkansas state court affirmed. Thereafter, plaintiffs brought a tort action for damages in federal court, where, on appeal, the Eighth Circuit refused to give collateral estoppel effect to the Commission's findings and allowed the damages action to proceed.

The fundamental bases of the opinion below and *Richardson* are very different. In *Richardson,* the prior state case was a request for an injunction before the agency which found no irreparable harm resulting from a violation of a pre-existing agency order. As the Eighth Circuit found, the "damages" element in the tort case was a different issue from the "irreparable harm" issue before the agency in a request for an injunction. 791 F.2d at 646. *See, also, Richardson,* 799 F.2d at 427 (reiteration by Eighth Circuit of irreparable harm versus damages distinction present in that case on denial of rehearing). The Eighth Circuit's determination that the issues were not the same under Arkansas law is apparently nothing more remarkable than recognition of the principle that an adequate remedy at law may be pursued if injunctive relief is denied.

Here, the issues in the prior proceedings were challenges to the core of the agency's decision-making on unitization; was material evidence withheld and was misleading evidence given to the agency. No pre-existing orders or violations were at issue, but rather, the validity of the Board order. Relitigating the core evidentiary considerations underlying the agency order in the antitrust case (where part of the relief sought by Petitioner was the redrawing of the unit map and the unit sharing formula) would, in fact, force an avoidance of a state agency order previously validated by the state courts. Because the issues in *Richardson* did not go to the heart of agency proceedings, *Richardson* is substantially different from this case.

Indeed, the Eighth Circuit, when confronted with a case such as that presented to the Fifth Circuit here, ruled as did the Fifth Circuit in giving preclusive effect to findings which, if relitigated, might force an avoidance of valid agency orders. In *Katter* v. *Arkansas Louisiana Gas Co.,* 765 F.2d 730 (8th Cir. 1985), *cited with approval in, Richardson,* 791 F.2d at 646, the Eighth Circuit gave preclusive effect to prior state proceedings where the relief sought was the undoing of the prior state action.

Accordingly, under proper Eighth Circuit precedent, Eubanks would be estopped as he was by the Fifth Circuit here.[1]

Dr. Eubanks also suggests that the Tenth Circuit's decision in *Tidewater Oil Co.* v. *Jackson*, 320 F.2d 157 (10th Cir.), *cert. denied*, 375 U.S. 942, 84 S.Ct. 347, 11 L.Ed.2d 273 (1963), conflicts with the decision below. *Tidewater* is distinguishable on its facts and because it was based on Kansas law. The Tenth Circuit found that collateral estoppel could be based on judicially-reviewed administrative findings. 320 F.2d at 161. Nevertheless, in applying the collateral estoppel rules under Kansas law to that case, the Tenth Circuit determined that the issue in the subsequent federal lawsuit had not actually been litigated in the prior state court lawsuit:

> [T]he order of the Commission did not purport to determine the issues involved in this case, and did not therefore, work an estoppel . . . .

320 F.2d at 162.

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[1] Eubanks' suggestion, that because the Alabama statutory scheme is like the Arkansas statutes a damages action should be allowed to proceed under Alabama law, is irrelevent. The Alabama statute cited by Eubanks, Ala. Code § 9-17-19, does not purport to change the collateral estoppel effect of judgments, decisions, or findings by Alabama courts reviewing the validity of Board orders; it merely says that the existence of an action by or against the Board shall not stop the bringing of a private damages action when violations of existing orders are asserted. It does not state that findings of a proper court establishing the validity of a challenged order can be relitigated despite Alabama collateral estoppel rules. The validity of Board orders can be tested only under Ala. Code § 9-17-15, see, *Whitney National Bank* v. *Bank of New Orleans*, 379 U.S. 411, 422, 85 S.Ct. 551, 13 L.Ed.2d 386 (1965), and they must have settled validity once challenged.

As for Alabama's collateral estoppel law, Alabama law does not require the jurisdictional competence of the prior tribunal over the subject matter in the subsequent case in order to apply collateral estoppel to issues properly litigated in the prior case. See *Timmons*, 528 So.2d. 845 (findings from a prior divorce action binding in a subsequent commercial damages case), and *Partlow* v. *Partlow*, 246 Ala. 259, 20 So.2d 517 (1945) (Alabama courts rendering divorces have limited jurisdiction and powers).

In this case, it is irrefutable that the prior state proceeding did adjudicate the precise issue which the Petitioner alleges as the monopolizing conduct in the subsequent federal case. The Fifth Circuit so found. 896 F.2d at 962. The fact determinations on this point distinguish *Tidewater* from the opinion below.

3. This case is controlled by existing Supreme Court precedent.

The issue arising in this case is controlled by *Becher* v. *Contoure Laboratories, Inc.*, 279 U.S. 388, 49 S.Ct. 356, 73 L.Ed. 752 (1929). The respondents were pursuing an action in New York Supreme Court based on breach of contract and wrongful disregard of confidential relations, both claims properly before the state tribunal. In the subsequent federal patent infringement case, the parties disputed whether facts established in the state court case could be given collateral estoppel effect in the federal patent lawsuit, because, if so recognized, such facts would have the effect of invalidating the patent. It was argued in *Becher* that because the validity of the patent was an issue exclusively within the jurisdiction of the federal courts, the state court findings should not be given preclusive effect (the identical argument proffered by Petitioner Eubanks here with respect to the antitrust laws).

This Court disagreed, holding:

> That decrees validating or invalidating patents belong to the courts of the United States does not give sacrosanctity to facts that may be conclusive upon the question in issue. A fact is not prevented from being proved in any case in which it is material, by the suggestion that if it is true an important patent is void . . .
>
> [W]e can see no ground for giving less effect to proof of such a fact than to any other. A party may go into a suit estopped as to a vital fact by covenant. We can see no sufficient reason for denying that he may be equally estopped by judgment.

279 U.S. at 391-92.

The clear logic of *Becher* is compelling; facts litigated in a proper case can estop a party from trying to prove or disprove their existence in subsequent litigation, regardless of the causes of action involved. *Talcott* v. *Allahabad Bank, Ltd.*, 444 F.2d

451, 463 (5th Cir.), *cert. denied sub nom., City Trade & Indus., Ltd.* v. *Allahabad Bank, Ltd.*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971) ("collateral estoppel . . . precludes in a second or subsequent suit the relitigation of fact issues actually determined in a prior suit *regardless of whether the prior determination was based on the same cause of action in the second suit.*") (emphasis in original). As *Becher* teaches, this general principle is applicable even where a state court finding works to preclude a claim within the exclusive jurisdiction of the federal courts.

This Court recently confirmed the principle enunciated in *Becher* in its *Marrese* decision. State court decisions can "have preclusive effect in a subsequent action within the exclusive jurisdiction of the federal courts" such as those arising under the federal antitrust statutes. 470 U.S. at 380. The full faith and credit statute so dictates. Thus, *Becher* controls this case, and mandates that a single finding by a state court be given preclusive effect on a subsequent claim made under the antitrust laws even though those laws are within the exclusive jurisdiction of the federal courts. There is no reason why a single factual element of an antitrust case should be relitigated if it has already been determined in prior state court litigation. Such a state court finding should be given its rightful preclusive effect. To do otherwise would severely undermine the respect to be accorded Alabama court decisions pursuant to 28 U.S.C. § 1738.

4. The Fifth Circuit correctly applied this Court's directives concerning 28 U.S.C. § 1738.

In *Marrese*, this Court directs the circuit courts to "rely in the first instance on state preclusion principles to determine the extent to which an earlier state judgment bars subsequent litigation." 470 U.S. at 382. That is, of course, precisely what the Fifth Circuit did below. In an in-depth analysis of each of the components of Alabama's collateral estoppel rules, the Fifth Circuit meticulously reviewed whether the elements were met. It is this sort of analysis which this Court contemplated for applications of 28 U.S.C. § 1738.

Based upon this element-by-element analysis, the Fifth Circuit concluded that the sole allegations of monopolizing conduct in the antitrust case were indeed the precise "facts" litigated and decided against Eubanks in the prior state court case. Under Alabama collateral estoppel rules, it has been conclusively and completely decided that the information submitted by Getty was reasonable and that the information withheld by Getty was not material or necessary to the Board's decision. No legal theory can be impressed upon assertions of "facts" to the contrary. The Fifth Circuit's holding is simply unexceptional.

Petitioner's attempts to avoid controlling precedent and to suggest that the Fifth Circuit's decision is a novelty are unfounded. *Becher* nowhere appears in the petition. Instead, a meaningless jurisdictional competency argument under irrelevant res judicata rules is advanced. As we noted earlier, this is not an aberrational "could have been litigated" res judicata case; it is a "fact was decided" collateral estoppel case.

Despite the imprecise wording of the question presented which suggests that an agency finding is given preclusive effect, the facts are that a court decision reviewing an agency order is being given preclusive effect. This is not novel, not even for the Fifth Circuit. *See e.g., Holmes* v. *Jones,* 738 F.2d 711 (5th Cir. 1984) (Mississippi state court decisions affirming action of school board act as collateral estoppel to foreclose relitigation of facts in subsequent federal suit); *Cornwell* v. *Ferguson,* 545 F.2d 1022, *reh. denied,* 548 F.2d 355 (5th Cir. 1977); *Jennings* v. *Caddo Parish School Board,* 531 F.2d 1331 (5th Cir.), *cert. denied,* 429 U.S. 897, 97 S.Ct. 260, 50 L.Ed.2d 180 (1976). Even if an agency finding were being accorded preclusive effect, it would be no novelty to the precedents of this Court. *See, e.g., United States* v. *Utah Construction & Mining Co.,* 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 15, 1990

APPENDIX

UNITED STATES CODE, TITLE 28

§ 1738. State and Territorial Statutes and judicial proceedings; full faith and credit.

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.